Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

—DECISION—

Decision No.: 736-BR-91

Date: June 20, 1991

Claimant: Aminata Kamara

Appeal No.: 9104821

S. S. No.:

Employer: Abbott Enterprises, Inc.

L. O. No.: 43

Appellant: EMPLOYER

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES July 20, 1991

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:
REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board concludes that the claimant quit her employment. After calling in sick for a week, the claimant appered on payday, picked up her check, and stated that she would return shortly. She never did return. The employer contacted the claimant at an unspecified later time and said that she had assumed that the claimant quit.

The employer's assumption was reasonable. Since the claimant quit her job, the burden is on her to prove that she had "good cause" or "valid circumstances" for doing so.

The claimant's hours were changed to 6:00 a.m. to 2:30 p.m. to 11:00 a.m. to 3:00 p.m. Normally, such a drastic reduction in hours would constitute good cause or valid circumstances. The reduction in hours, however, was caused by the claimant's demonstrated inability to get to work at 6:00 a.m. on a regular basis. Where a demotion leading to a cut in pay is caused by the claimant's own detrimental conduct, the cut in pay does-not amount to good cause or valid circumstances. Dew v. Plumbers and Pipefitters National Pension Fund (969-BR-86).

Such is the case here. The employer was forced to hire someone else to take over the early hours of her shift because the claimant was so often late or absent. The change in hours thus cannot amount to good cause or valid circumstances.

DECISION

The claimant voluntarily quit, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits from the week beginning January 27, 1991 and until she becomes reemployed, earns at least ten times her weekly benefit amount ($1,480.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:D
kmb

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Date: Mailed 4/18/91

Claimant: Aminata Kamara

Appeal No.: 9104821

S. S. No.:

Employer: Abbott Enterprises, Inc.

L.O. No.: 43

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work under Section 6 (b) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON May 3, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by
George Abbott, (Wrier

FINDINGS OF FACT

The claimant began working as a cook on April 5, 1989. At the time of her separation on February 1, 1991, she was earning a salary of $7.00 an hour.

The record shows that when the claimant was first employed, she informed the employer that because she had children there would be days when she would not be able to report for work, because of child care problems or school or illness. There were days during the early days of the claimant's employment where she was absent; however, these absences were approved in advance by the employer. From June, 1990 to January 15, 1991 the claimant missed approximately 13 days without approval and was late quite a number of times.

The employer has a contract with the National Institute of Health which required him to open his cafeteria at 7 a.m. The claimant was required to report at 6 a.m. in order to prepare for the morning customers. Because the claimant was continuously late, the emploeyer's contract was jeopardized.

The employer's wife discussed the claimant's child care problems on several times with her, and made suggestions as to ways she could solve the problem, which included contacting various churches in the area, etc. Domestic situations created an even greater problem because the claimant's husband and mother moved out and, therefore, she was left without their assistance. The child care that she initially had opened at 7 a.m. so that she was unable to make it to work at 6 a.m.

The claimant's absences were also due to the fact that her son had a foot problem and she was required to report to his school frequently.

Shortly prior to the claimant's separation, the employer notified her by letter that her hours were being changed to 11 a.m. to 3 p.m. Because he needed someone at 6 a.m., he was going to look for an employee to come in at that time. After the letter, the claimant did not report for work. During the first week, she notified the employer that she was ill with a sore throat and, thereafter, the employer replaced her by making the part-time person who came in at 6 a.m. a permanent employee.

The record shows that the employer spoke with the claimant on occasion about her personal problems, but there is no indication that she was warned or cautioned that her job was in jeopardy.

CONCLUSIONS OF LAW

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of

violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

From the beginning of the claimant's employment, she was besieged with personal problems which interfered with her ability to report for work as scheduled and on time. The employer has a right to expect that the claimant report for work when she is suppose to. However, in this case, the employer was aware of the claimant's problem and, for the most part, tried to assist her with them by giving her time off and finally changing her hours from 6 a.m. to 3 p.m. to 11 a.m. to 3 p.m. This was economically untenable for the claimant because her child care expenses were the same regardless of how many hours she worked. With a reduction in income, there was no reduction in the cost of child care.

There is no evidence to support a conclusion that the claimant willfully, or intentionally disregarded her obligations to her employer. Therefore, it is concluded that the claimant's conduct did not constitute gross misconduct connected with the work, and the Claims Examiner's decision will be reversed.

DECISION

The claimant was discharged for misconduct connected with the work within the meaning of Section 6 (c) of the Law. Benefits are denied for the week beginning January 27, 1991 and the nine weeks immediately following.

The determination of the Claims Examiner is reversed.

Mary Welcome
Hearing Examiner

Date of Hearing: 4/9/91
cd/Cassette #3856
Specialist ID: 43772

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Claimant
Employer
Unemployment Insurance - Wheaton (MABS)